

## **CHAPTER 7-06**

### **LIQUIDATION, SUSPENSION, RECEIVERSHIP**

**7-06-01. Voluntary liquidation and settlement.** Any domestic association doing business in this state may go into liquidation, with the consent of the commissioner of financial institutions, if the shareholders deem it advisable. Such liquidation must be initiated by a resolution declaring that such association intends to go into liquidation and to discontinue business as a building and loan association, and such resolution requires a two-thirds affirmative vote of the shareholders at any regular meeting, or at a special meeting called for the purpose of liquidation. A copy of the resolution, certified by the president and secretary of the association and under the seal thereof, must be transmitted to the commissioner within ten days after the adoption thereof. Thereupon, the commissioner may issue the commissioner's certificate reciting that such association is in liquidation. After the issuance of such certificate, it is unlawful for the association to issue shares or to loan or advance its money to shareholders or to any person or persons. All of the income and receipts of the association, in excess of the actual expense of managing the same, must be applied thereafter to pay off the indebtedness of the association. Any moneys not required for payment of indebtedness must be paid pro rata on the shares in the association upon which no loans have been made. The board of directors of an association in liquidation may adopt such rules and make such orders as are just and equitable for the sale and disposition of all property held by the association and for the division of its assets. An association in liquidation is subject to examination by and is under the supervision of the commissioner.

**7-06-02. Duties of commissioner when association operates unlawfully or is insolvent.** Whenever the commissioner of financial institutions, from any examination made by the commissioner or from any report made to the commissioner or to the shareholders, finds that any association operating under this title is violating the provisions of its charter or of this title, or is conducting its business in an unsafe or unauthorized manner, the commissioner, by an order addressed to the association so offending, shall direct a discontinuance of such violations or unsafe practices and a conformity to all requirements of the law. If such association refuses or neglects to comply with such order within the time specified therein, or if it appears to the commissioner that the association is in an unsafe condition, or is conducting its business in an unsafe manner such as to render its further proceeding hazardous to the public or to those having funds in its custody, or if the commissioner finds that its assets are impaired to such an extent that after providing for all liabilities other than to shareholders, they do not exceed in volume the dues or principal payments paid in by shareholders and accredited to or on account of all classes of shares issued and outstanding, the commissioner, in order to prevent waste and diversion of assets, shall assume and take charge of the affairs and business of such association, and possession of all its books, records, and assets of every description, and the commissioner shall hold and retain the possession thereof pending the further proceedings as specified in this chapter.

**7-06-03. Refusal of association to deliver assets to commissioner.** Should the board of directors, secretary, or person in charge of any association refuse to permit the commissioner of financial institutions to take possession of the association and its books, assets, and records as provided in section 7-06-02, the commissioner shall communicate such fact to the attorney general. It then is the duty of the attorney general immediately to institute such proceedings as may be necessary to place the commissioner in immediate possession of the property of such association.

**7-06-04. Commissioner's duties upon taking over association.** Immediately upon securing possession of the effects of an association as provided in this chapter, the commissioner of financial institutions shall prepare a full and true statement of the affairs and condition of such association, and shall include in such statement an itemized list of its assets and liabilities. The commissioner shall proceed to receive and collect all debts, dues, and claims belonging to the association, and shall pay the immediate and reasonable expenses of the commissioner's trust. When the condition of the association has been ascertained fully, if it appears that its affairs are in fact in an unsound condition, the commissioner at once shall notify the board of directors of the association of the commissioner's decision, in writing, and shall give

the directors twenty days in which to restore the affairs of the association to a sound condition. During such period, the commissioner shall remain in charge of the books, records, and assets of every description of the association, and shall attend personally, or be represented, at all meetings of the directors or shareholders. The commissioner shall suggest such steps as the commissioner may deem necessary to restore such association to a sound condition, and if it is not restored to a sound condition within the twenty-day period herein limited, the commissioner shall report the facts to the attorney general. Thereupon it is the duty of the attorney general immediately to institute proceedings in the district court of the county in which such association has its principal place of business for the appointment of the commissioner as receiver.

**7-06-05. Duty and authority of receiver.** The commissioner of financial institutions as such receiver, after having furnished a good and sufficient surety bond in an amount to be set by the court, shall proceed to liquidate the association's affairs. The commissioner is authorized to collect all moneys due such association and to do and perform all acts necessary to conserve its assets and business. The commissioner has general power and authority, except as otherwise limited by this chapter, to do any and all acts and to take any and all steps which the commissioner deems necessary or desirable for the protection of the property and assets of such association, the speedy and economical liquidation of its assets and affairs, and the payment of its creditors, or for the reopening and resumption of business by the association when that is practicable or desirable. The commissioner may institute, either in the commissioner's name as receiver or in the name of the association, such legal proceedings as the commissioner deems expedient for the purposes set forth in this title.

**7-06-06. Sale of assets - Compromising liabilities.** Upon application to the district court of the county in which the association has its principal place of business, the receiver, upon proper and sufficient showing of cause therefor, may procure an order to sell or compromise any bad or doubtful debt or claim, or to sell or dispose of any or all of the assets. Such sale, with the consent and approval of the court, may be made to shareholders, officers, directors, or others interested in the association. In any such proceeding, the association must be made a party by notice, on the order of the court or judge in lieu of summons, and such notice must be served on one of the directors of the association in the same manner as a summons is served in a civil action. The hearing of any application or petition by the receiver may be had at any time as the court may order, but the association shall have at least five days' notice of any such application or petition.

**7-06-07. Receivership if association is insured under federal law.** If the association is an insured association within the provisions of the National Housing Act as now or hereafter amended, a signed and sealed copy of each order and certificate of the commissioner of financial institutions mentioned in sections 7-06-02, 7-06-03, and 7-06-04 must be sent promptly by the commissioner by registered or certified mail to the federal savings and loan insurance corporation, Washington, D.C., and if the association has such insurance protection, the federal savings and loan insurance corporation is empowered, at its option, to act as receiver or coreceiver in the liquidation of the affairs of the association, and, if it desires, must be appointed as such receiver or as coreceiver with the commissioner. If it serves as receiver or coreceiver, it has all the rights, privileges, and powers granted to the commissioner as receiver, and also has all the rights, privileges, and powers conferred upon it by federal statutes now or hereafter enacted. It may advance money and make loans on the security of assets in liquidation or may purchase such assets or any part thereof at public or private sale, and it may bid for and purchase at any receiver's sale, and otherwise may liquidate or sell any part of the assets of the association of which it is receiver or coreceiver. In the event of purchase of any of such assets by said federal savings and loan insurance corporation, it shall bid and pay a fair and reasonable price therefor.

**7-06-08. Subrogation of federal corporation on payment of insured liabilities.** Whether or not the federal savings and loan insurance corporation serves as receiver or coreceiver of any insured association in liquidation, whenever it pays or provides funds for the payment of all or any part of the liabilities of such association, it is subrogated to the rights of those benefited by or receiving such payments. It may acquire and have transferred to it all or any part of any shares, share account, or account insured by it, and thereupon is subrogated to

all rights of the transferors thereof. Such transfer of such shares, share account, or account does not affect any of the transferor's rights in any uninsured or untransferred portion thereof nor the transferor's rights to participate in the distribution of the net proceeds of the disposition and liquidation of the assets of the association in proportion to the transferor's interest not so transferred. The rights of the investors and creditors of such an association must be determined in accordance with the applicable provisions of the laws of this state.